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AMI SEMICONDUCTOR, INC., MATROX  
7 ELECTRONIC SYSTEMS, LTD., MATROX  
GRAPHICS, INC., MATROX INTERNATIONAL  
8 CORP., MATROX TECH, INC., and  
AEROFLEX COLORADO SPRINGS, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 RICOH COMPANY, LTD.,  
14

15 Plaintiff,

16 vs.

17 AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
18 ELECTRONIC SYSTEMS LTD., MATROX  
GRAPHICS INC., MATROX  
INTERNATIONAL CORP., MATROX TECH,  
19 INC., AND AEROFLEX COLORADO  
SPRINGS, INC.

20 Defendants.  
21

SYNOPSIS, INC.,  
22

23 Plaintiff,

24 vs.

25 RICOH COMPANY, LTD.,  
26

27 Defendant.  
28

Case No. C03-4669 MJJ (EMC)

Case No. C03-2289 MJJ (EMC)

OPPOSITION TO RICOH'S MOTION FOR  
LEAVE TO FILE SURREPLY RE MOTION  
FOR RULE 11 SANCTIONS AGAINST  
RICOH FOR ASSERTING FRIVOLOUS  
CLAIMS

Date: October 17, 2006  
Time: 9:30 a.m.  
Courtroom: 11, 19<sup>th</sup> Floor  
Judge: Hon. Martin J. Jenkins

1 Ricoh's motion for leave to file a surreply should be denied.

2 First, Ricoh's request for leave is based upon the erroneous premise that Defendants raised new  
3 arguments in their reply brief. Yet, it is apparent that the two "new" arguments Ricoh alleges  
4 Defendants make are not new and were fair responses to arguments advanced in Ricoh's Opposition.  
5 See Rule 11 Opp. at 6 ("Defendants have known of Ricoh's position . . . *at least since Ricoh submitted*  
6 *its Final Infringement Contentions in March 2006.*"); *id.* at 22-23 (Section B entitled "Ricoh's  
7 Reliance Upon the Opinion of its Experts is Objectively Reasonable"). Ricoh's motion for leave to file  
8 a surreply should be denied, as Defendants' reply brief did precisely what a reply brief should –  
9 respond to the arguments made in Ricoh's Opposition. Moreover, Ricoh's motion should be denied  
10 because Ricoh could have made each of the arguments it raises now in its Opposition.

11 Second, Defendants' alleged knowledge of Ricoh's position does not justify leave for the  
12 following reasons:

- 13 a) Claim construction, including, in particular, the issue of what subject matter was  
14 disclaimed by the patentee, is a question of law on which this Court has already ruled;  
15 no statement by any lawyer could change this basic premise of patent jurisprudence  
(which Ricoh does not challenge). Reply at pp. 2:8-4:2.
- 16 b) Erik Oliver's letter does not admit that "register transfer level descriptions as defined by  
17 Darringer was a factual issue." Mtn. for Leave at 1:14-15. Defendants encourage the  
18 Court to review the evidentiary record for itself; it simply does not support Ricoh's  
assertions. Moreover, it was improper for Ricoh to submit and rely on "FRE  
408" communications exchanged exclusively between the parties for any purpose.
- 19 c) Rather than supporting Ricoh, the evidence submitted with Ricoh's surreply  
20 conclusively demonstrates that no "real insight" into Ricoh's position was provided  
21 until May of 2006. Every new document identified by Ricoh simply states that the RTL  
22 issue will be resolved at trial or is a question of fact. This does not constitute "real  
23 insight." In contrast, Ricoh's expert report (and Settlement Conference Statement)  
provide "real insight" as well as the evidentiary basis for Rule 11 sanctions: Ricoh's  
objectively unreasonable decision to ignore or contradict the Court's Claim  
Construction Order.
- 24 d) Even if Defendants understood earlier that Ricoh's ultimate plan was to have an expert  
25 opine on a purely legal issue in direct contradiction of the Court's Claim Construction  
26 Order, which they did not, that does not excuse Ricoh's violation of Rule 11.

1 Third, Defendants' motion is not premised on any hunch or conjecture about Ricoh's experts.<sup>1</sup>  
 2 Defendants' Rule 11 motion is based on the fact that Ricoh and its counsel behaved objectively  
 3 unreasonably by not dismissing this case, or seeking review, reconsideration or clarification, as soon as  
 4 they discovered that they could not advance an infringement argument consistent with the Court's clear  
 5 Claim Construction Order, which dictates a finding of noninfringement in this case.

6 Finally, Ricoh and its counsel cannot hide behind experts to avoid Rule 11 sanctions. Ricoh  
 7 and its counsel hired the expert, directed his efforts, and instructed its expert to opine on something  
 8 Ricoh and counsel knew to be a purely legal issue. Moreover, it is irrelevant that Dr. Soderman has  
 9 decided to agree with Dr. Papaefthymiou on the purely legal issue of what is taught in Darringer.<sup>2</sup>  
 10 What is relevant – and determinative,<sup>3</sup> however, is that Dr. Soderman agrees with Defendants that  
 11 Defendants' inputs fall within the scope of the disclaimed "RTL as taught in Darringer" as the claim  
 12 has been construed by the Court.<sup>4</sup> Reply at pp. 6:6-7:5.<sup>5</sup>

13 It is not only reasonable, but expected, that when the Court issues its Claim Construction Order  
 14 it will be reviewed carefully by the parties and followed. It is not sanctionable for a party to seek  
 15 clarification or reconsideration of the Court's ruling or even to stipulate to noninfringement based on  
 16 the ruling and seek appeal. However, it is objectively unreasonable and sanctionable to hire an expert  
 17 and have that expert offer an opinion that contradicts the Court's Claim Construction Order and to  
 18  
 19

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20 <sup>1</sup> The Court should note the irony inherent in the contrast between Ricoh's arguments. Ricoh argues Defendants have been  
 21 "caught in a lie" because they should have had "real insight" into Ricoh's theory as of Mr. Takaguchi's letter of May 2,  
 22 2005. If Defendants should have had "real insight" (which they did not), then clearly Ricoh and its counsel had such  
 23 insight – and they had it and decided to proceed long before Dr. Papaefthymiou was hired.

24 <sup>2</sup> In its expert reports Ricoh clearly relied only on Dr. Papaefthymiou with regard to this claim element. In any event, the  
 25 analysis would not change regardless of how many paid experts were willing to opine in contradiction to the Court's Claim  
 26 Construction Order.

27 <sup>3</sup> The case would need to be dismissed regardless of Dr. Soderman's testimony on this issue. Ricoh's sole expert report on  
 28 this issue, from Dr. Papaefthymiou, does not include any evidence supporting infringement under the Court's definition.

<sup>4</sup> Defendants have not advanced any new definition of Darringer or made any new noninfringement arguments as the Court  
 is undoubtedly aware, but simply describe the same definition in different words for readability.

<sup>5</sup> Ricoh suggests in its footnote 5 that the inadvertently omitted "CITE" in Defendants' reply represents unsupported facts.  
 This is wrong. The inadvertent missing cite from footnote 8 of the Reply is Brothers Decl. [Docket 622], Ex. 32 (Soderman  
 Tr. at 55:20-21; 78:20-80:13).

1 continue to advocate infringement based on the expert's opinion. For these reasons, Ricoh's request  
2 for leave to file a surreply should be denied, and Rule 11 sanctions should be granted.

3 Dated: October 12, 2006

Respectfully submitted,

4 HOWREY LLP

5  
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10 INCORPORATED, AMI  
11 SEMICONDUCTOR, INC., MATROX  
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13 MATROX GRAPHICS INC., MATROX  
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